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No. 1135

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1946

THE UNITED STATES, *Petitioner,*

v.

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, ET AL., *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF IN OPPOSITION

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SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari. No contention is made that the rate order of the Public Utilities Commission is in violation of the due process clause of the Fifth Amendment.

The Commission in establishing the rate order did not neglect the interests of the consumer but on the contrary adequately protected the consumer by reducing the rate and ordering a refund.

The Potomac Electric Power Company, the utility company here involved, is entitled to a return on its earned surplus since the surplus is not a contribution by the consumer.

The findings of fact of the Commission are not unreasonable, arbitrary or capricious; therefore, they are conclusive.

The Commission is presumed to have acted in accordance with law.

The petition constitutes nothing more than a request for another hearing.

ARGUMENT

I

The petition should be denied

The statute involved is limited in its operation to the District of Columbia. This Court has stated that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia* v. *Pace,* 320 U. S. 698, 702, 64 S. Ct. 406, 88 L. Ed. 408; *Del Vecchio* v. *Bowers,* 296 U. S. 280, 285, 56 S. Ct. 190, 80 L. Ed. 229.

The case does not involve a question of general importance or a question of substance relating to the construction or application of the Constitution, or a treaty of the United States, which has not been, but should be, settled by this Court. The petitioner does not question the constitutionality of the statute. The case does not involve a statute of the United States which should be settled by this Court although the statute involved was enacted by the Congress of the United States. All statutes in force and effect in the District of Columbia are enacted by Congress in the exercise of that power expressly delegated to it by Article I, Section 8, Clause 17, of the Constitution. Subject only to those prohibitions of the Constitution which act directly or by implication upon the federal government, Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within

the District of Columbia by any and every act of legislation which it may deem conducive to that end. When acting thus, Congress acts as a legislature of national character. *Cohens* v. *Virginia*, 19 U. S. 264, 6 Wheat. 264, 5 L. Ed. 257. However that may be, the statute is not national in its operation.

II

The Commission adequately protected the consumer by reducing the rate and ordering a refund

That the Commission in establishing the rate order did not neglect the interests of the consumer but adequately protected the consumer is borne out by the following excerpts from the decision of the United States Court of Appeals for the District of Columbia in the instant case:

> "It is urged that the entire arrangement of the sliding scale for the period in which it has been in operation permitted the Company to earn an exorbitant, and 'unlawful' profit at the expense of the consumers. In the first place we note that as a practical matter the arrangement did result in a steady and substantial reduction in the cost of electric power. The permissible rate of return to the Company was reduced over a period of years in accordance with the general decline of interest rates and each year one-half of the excess earnings were set up as the basis for reducing consumer's price schedules." (R. 659)
>
> " * * * In the instant case it appears that the power consumers in this locality enjoy rate schedules that compare very favorably with those prevailing in other major cities. This, of course, is not an argument to show that the rates should not be still lower, but it does go to establish that high profits and just rates are not prima facie incompatible.
>
> " * * * we do not think that this court should impose its judgment to the effect that these earnings be declared 'unlawful', unless it clearly be shown that

> the rates which gave rise to the earnings are invalid because they woefully neglected the interests of the consumers." (R. 660-661)

In the light of these premises the order of the Commission should be sustained.

III

The Company is entitled to a return on its earned surplus since the earned surplus is not a contribution by the consumer

This Court has held that even though in prior years a company charged excessive amounts to depreciation expense and so created in the reserve account balances greater than required adequately to maintain the property, the revenue paid by the customer for service belongs to the company and the amount remaining after paying taxes and operating expenses is the company's compensation for the use of its property. Property paid for out of moneys received for service belongs to the company just as does that purchased out of proceeds of its bonds and stocks. *Board of Public Utility Commissioners* v. *New York Telephone Co.*, 271 U. S. 23, 46 S. Ct. 363, 70 L. Ed. 808. It follows, therefore, that instead of investing this reserve in plant the Company could have disbursed it in dividends. The Company chose to invest this surplus in its plant used and useful in supplying electric power to its customers, and the value of the plant should be included in the rate base.

IV

Since the findings of fact of the Commission are not unreasonable, arbitrary or capricious, they are conclusive

Paragraph 66, Section 8, of the Act of March 4, 1913, 37 Stat. 989, ch. 150, as amended by Section 2 of the Act of August 27, 1935, 49 Stat. 883, ch. 742 (Section 43-706, D. C. Code, 1940), (Petition, page 36), provides that:

> "In the determination of any appeal from an order or decision of the commission the review by the court shall be limited to questions of law, including constitutional questions; and the findings of fact by the commission shall be conclusive unless it shall appear that such findings of the commission are unreasonable, arbitrary or capricious."

In its essentials, the order complained of constitutes the finding of an ultimate fact. It is submitted that the order has warrant in the record and a reasonable basis in the law. *Cf. Dobson* v. *Commissioner,* 320 U. S. 489, 64 S. Ct. 239, 88 L. Ed. 248.

V

The Commission is presumed to have acted in accordance with law

This Court has said that "It is well established that in a question of rate-making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing." *Darnell* v. *Edwards,* 244 U. S. 564, 569, 37 S. Ct. 701, 61 L. Ed. 1317, 1321.

It is to be presumed that public officers act rightly. *Pendleton County* v. *Amy,* 80 U. S. 297, 13 Wall. 297, 20 L. Ed. 579; *Town of Coloma* v. *Eaves,* 92 U. S. 484, 2 Otto 484, 23 L. Ed. 579; *Quinlan* v. *Green County,* 205 U. S. 410, 27 S. Ct. 505, 51 L. Ed. 860.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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